

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3

4 MELITA MEYER, et al., individuals, on  
5 behalf of themselves and all others similarly  
6 situated,

7 Plaintiffs,

8 v.

9 BEBE STORES, INC.

10 Defendants.

Case No. 14-cv-00267-YGR

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT**

**\*AS MODIFIED BY THE COURT\***

Date: July 18, 2017  
Time: 2:00 p.m.  
Dept. 1, 4th Floor  
Judge: Hon. Yvonne Gonzales  
Rogers

11 Related Case

Case No.: 14-CV-01968-YGR

12  
13 This matter came on for hearing before the Court on July 18, 2017, at 2:00 p.m., in  
14 Courtroom 1, of the United States District Court, Northern District of California, located at 1301  
15 Clay Street, Oakland, CA 94612 before the Honorable Yvonne Gonzalez Rogers, pursuant to  
16 Plaintiffs' noticed Motion for Preliminary Approval of Class Action Settlement. Appearances  
17 were noted in the record.

18 The Court having reviewed the materials submitted by the parties, the hearing held July  
19 18, 2017, and for the reasons stated on the record as well as those discussed below, the Court  
20 finds and orders as follows:

21 The Court, having considered the documents filed by the parties in connection with the  
22 class action settlement, the arguments of counsel, the Motion for Preliminary Approval of Class  
23 Action Settlement, filed June 13, 2013, and all pleadings and papers in the record, hereby grants  
24 final preliminary approval of the class settlement and HEREBY ORDERS AND MAKES THE  
25 FOLLOWING DETERMINATIONS:

26 1. **Definitions.** Except as otherwise specified herein, the Court for purposes of this  
27 Preliminary Approval Order adopts all defined terms set forth in the Settlement Agreement and  
28 Release ("Settlement Agreement"), attached hereto as Exhibit 1.

1.

1           1.       ***Jurisdiction.*** This Court has jurisdiction over the subject matter of this litigation  
2 and all claims raised in this action and released in the Settlement Agreement, and personal  
3 jurisdiction over all Settlement Class Members. Specifically, this Court has subject matter  
4 jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5           2.       ***Notice.*** This Court finds that the proposed Email Notice (attached as Exhibit 2),  
6 Publication Notice (attached as Exhibit 3) and Full Notice (attached as Exhibit 4) in Section 3.3  
7 of the Settlement Agreement are designed to (i) inform Class Members fully and accurately about  
8 the class action and Settlement, including providing information designed to assist Class  
9 Members' when deciding whether to accept the benefits offered in the Settlement, opt-out and  
10 pursue their own remedies, or object to the proposed Settlement; (ii) provide procedures for Class  
11 Members to file a valid Claim Form timely (attached as Exhibit 5), electing to receive a  
12 Settlement Payment; (iii) provide procedures for Class Members to file written objections to the  
13 proposed Settlement, to appear at the final fairness hearing, and to state objections to the  
14 proposed Settlement; (iv) provide procedures for Class Members to exclude themselves from the  
15 proposed Settlement in a timely manner; (v) advise the Class Members of the proposed Service  
16 Award payable to Plaintiffs Melita Meyer and Courtney Barrett; (vi) advise the Class Members of  
17 the proposed Attorney's Fees payable to Class Counsel; and (vii) provide the time, date, and place  
18 of the final fairness hearing. The Court finds and determines that the notice procedure in  
19 Section 3.3 of the Settlement Agreement will afford adequate protections to Class Members and  
20 will provide a basis for the Court to make an informed decision regarding final approval of the  
21 Settlement based on the responses of Class Members. The Court finds and determines that the  
22 notice procedure in Section 3.3 of the Settlement Agreement is the best notice practicable and  
23 will satisfy the requirements of Fed. R. Civ. P. 23 and due process. Defendant bebe shall notify  
24 Class Members of the settlement in the manner specified under Section 3.3 of the Settlement  
25 Agreement.

26           3.       ***Settlement Terms.*** Upon review of the record, the Court hereby finds that the  
27 Settlement Agreement, including, but not limited to, the proposed Settlement Payments appear to  
28 be, in all respects, fair, adequate to the Settlement Class and to each Settlement Class Member.

1 The Court took into account: (a) the complexity of Plaintiffs' theory of liability; (b) the arguments  
2 raised by bebe in its pleadings, motions, and Petition filed with the Federal Communications  
3 Commission that could potentially preclude or reduce the recovery by Class Members; (c) that  
4 delays in any award to the Class that would occur due to further litigation and appellate  
5 proceedings; (d) the amount of discovery that has occurred; (e) Air2Web, Inc.'s absence from the  
6 litigation; (f) the parties' representations regarding bebe's financial condition; (g) the relief  
7 provided to the Settlement Class Members; and (h) the recommendation of the Settlement  
8 Agreement by counsel for the Parties.

9 1. ***Provisional Certification of Class.*** Solely for purposes of effectuating this  
10 Settlement, this Court certifies the "Class" as "all persons in the United States who provided their  
11 mobile telephone number to bebe in one of bebe's stores at the point-of-sale between October 16,  
12 2013 and January 21, 2014 and received an SMS or text message from bebe before January 22,  
13 2014. For purposes of this Settlement, Rodriguez is also part of the Class and a Class Member.  
14 Excluded from the Class are bebe's Counsel, officers, directors, employees and agents." This  
15 Class was certified in the Court's Order Granting in Part and Denying in Part Plaintiffs' Motion  
16 For Class Certification (Dkt. No. 106) as two sub-classes:

17 ***Post-October 16, 2013 Non-Club Bebe Class***

18 All persons within the United States who provided their mobile telephone number to bebe  
19 in one of bebe's stores at the point-of-sale and were sent an SMS or text message from  
20 bebe during the period of time beginning October 16, 2013 and continuing until the date  
the Class is certified, who were not members of Club bebe during the Class Period.

21 ***Post-October 16, 2013 Club Bebe Class***

22 All persons within the United States who provided their mobile telephone number to bebe  
23 in one of bebe's stores at the point-of-sale and were sent an SMS or text message from  
24 bebe during the period of time beginning October 16, 2013 and continuing until the date  
the Class is certified, who were members of Club bebe during the Class Period.

25 2. ***Rule 23 Findings.*** With respect to the Settlement Class and for purposes of his  
26 Preliminary Approval Order only, this Court finds and concludes that: (a) the Members of the  
27 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;  
28 (b) common questions of law or fact exist as to the Settlement Class which predominate over any

3.

1 individual issues; (c) the claims of Class Representatives Melita Meyer and Courtney Barrett are  
2 typical of the claims of the members of the Class, which is comprised of the two sub-class  
3 provisionally certified by the Court; (d) the Class Representatives have fairly and adequately  
4 protected the interests of the Members of the Class; (e) a class action is superior to other available  
5 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the  
6 Class Representatives, i.e., Class Counsel, are qualified to serve as counsel for Plaintiffs in their  
7 individual and representative capacities and for the Settlement Class. The Court's findings are  
8 based on Plaintiff's motions for class certification and preliminary approval, and on the fact that  
9 bebe has not opposed class certification for the limited purpose of class action settlement. This  
10 Order is for settlement purposes only, and shall not constitute or be construed as an admission by  
11 bebe that this Action is appropriate for class treatment for litigation purposes.

12         3.       ***Claim Forms.*** Class Members who want to receive a Settlement Payment under  
13 the Settlement Agreement must timely submit a valid and complete Claim Form to the Claims  
14 Administrator no later than ninety (90) calendar days after entry of this Order.

15         4.       ***Objection to Settlement.*** Class Members who have not submitted a timely written  
16 exclusion request pursuant to paragraph 10 below and who want to object to the Settlement  
17 Agreement must file such objection with the Court no later than ninety (90) calendar days after  
18 entry of this Order. The delivery date is deemed to be the date the objection is properly filed with  
19 this Court. The objection must include: (a) the name and case number of the Action "*Meyer v.*  
20 *bebe stores, inc., et al.*, Case 14-cv-00267"; (b) the full name, address, and telephone number of  
21 the person objecting (email address is optional); (c) the words "Notice of Objection" or "Formal  
22 Objection"; and (d) in clear and concise terms, the objection and legal and factual arguments  
23 supporting the objection; and (e) facts showing that the person objecting is a Class Member. The  
24 written objection must be signed and dated, and must include the following language immediately  
25 above the signature and date "I declare under penalty of perjury under the laws of the United  
26 States of America that the foregoing statements regarding class membership are true and correct  
27 to the best of my knowledge." Any Class Member who files and serves a written objection, as  
28 described in this paragraph, may appear at the Fairness Hearing, either in person or through

1 personal counsel hired at the Class Member's expense, to object to the Settlement Agreement.  
2 Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing,  
3 however, must include on a timely and valid objection a statement substantially similar to "Notice  
4 of Intention to Appear." If the objecting Class Member intends to appear at the Fairness Hearing  
5 through counsel, he or she must also identify the attorney(s) representing the objector who will  
6 appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail  
7 address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends  
8 to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such  
9 request must be made in the Class Member's written brief, which must also contain a list of any  
10 such witnesses and a summary of each witness's expected testimony. Only Class Members who  
11 timely file an objection containing a Notice of Intention to Appear may speak at the Fairness  
12 Hearing. An objection will not be valid if it only objects to the lawsuit's appropriateness or  
13 merits.

14       5.     ***Failure to Object to Settlement.*** Class Members who fail to object to the  
15 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their  
16 right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a  
17 subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement;  
18 and (3) not be entitled to speak at the Fairness Hearing.

19       6.     ***Requesting Exclusion.*** Class Members who want to be excluded from the  
20 settlement must send a letter or postcard to the Claims Administrator stating: (a) the name and  
21 case number of the Action "*Meyer, et al., v. bebe stores, inc.*, Case No. 14-cv-00267"; (b) the full  
22 name, address and mobile telephone number of the person requesting exclusion (email address is  
23 optional); and (c) a statement that the person does not wish to participate in the settlement. The  
24 request must be postmarked no later than ninety (90) calendar days after entry of this Order.

25       7.     ***Conditional Appointment of Class Representatives and Class Counsel.*** Plaintiffs  
26 Melita Meyer and Courtney Barret are conditionally certified as the Class Representatives to  
27 implement the Parties' Settlement in accordance with the Settlement Agreement. The law firms  
28 of Strategic Legal Practices, APC, Mazie Slater, Katz & Freeman, LLC, Kearney Littlefield LLP

1 and EcoTech Law Group are conditionally appointed as Class Counsel. Plaintiff and Class  
2 Counsel must fairly and adequately protect the Class's interests.

3 8. **Termination.** If the Settlement Agreement terminates for any reason, this Action  
4 will revert to its previous status in all respects as it existed immediately before the Parties  
5 executed the Settlement Agreement, except as modified by the Court's Order Vacating Dates;  
6 Setting Schedule for Preliminary Approval (Dkt. No. 153). This Order will not waive or  
7 otherwise impact the Parties' rights or arguments.

8 9. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or  
9 concession on any point of fact or law by or against any Party.

10 10. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and  
11 deadlines are stayed and suspended until further notice from the Court, except for such actions as  
12 are necessary to implement the Settlement Agreement and this Order.

13 11. **CAFA Notice.** The Court finds that bebe has complied with 28 U.S.C. § 1715(b).

14 12. **Fairness Hearing.** On November 28, 2017 at 2:00 p.m., this Court will hold a  
15 Fairness Hearing to determine whether the Settlement Agreement should be finally approved as  
16 fair, reasonable, and adequate. Based on the date of this Order and the date of the Fairness  
17 Hearing, the following are the certain associated dates in this Settlement:

Event	Timing	Date
Last day for bebe, via the Claims Administrator, to send Email Notice, to provide Publication Notice, and to start operating the Settlement Website	30 calendar days after entry of this Order	August 18, 2017
Last day for Plaintiffs to file fee petition	69 calendar days after entry of this Order	September 26, 2017
Last day for Class Members to file a claim, request exclusion or object to the Settlement	90 calendar days after entry of this Order	October 17, 2017

Event	Timing	Date
Last day for parties to file opening briefs in support of the Final Order	35 calendar days before the Fairness Hearing	October 24, 2017

This Court may order the Fairness Hearing to be postponed, adjourned or continued. If the Fairness Hearing is postponed, adjourned or continued, the updated hearing date shall be posted on the Settlement Website, but bebe will not be required to provide any additional notice to Class Members.

DATED: July 19, 2017



YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE